

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

OP.No. 7735 of 2001(U)

PETITIONER:

**R.MURALEEDHARAN,
RAMANKANDATH HOUSE,
ENGINEERING COLLEGE P.O.,
THRISSUR – 680 009.**

**BY ADV. SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.S.D.ASOKAN**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE CHIEF
SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. KERALA WATER AUTHORITY, REPRESENTED BY ITS
MANAGING DIRECTOR, JALABHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM.**

**BY ADV. SRI.C.UNNIKRISHNAN for R2
BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN for R1**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON C.M.P.NO.12635/2001 IN O.P.NO.7735/2001 U

DISMISSED

4/07/2007

SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER DTD. 17/06/1997 ISSUED BY THE KERALA WATER AUTHORITY.

EXT.P2: COPY OF REPRESENTATION DTD. 3/10/1997 FILED BY THE PETITIONER BEFORE THE KERALA WATER AUTHORITY.

EXT.P3: COPY OF REPRESENTATION DTD. 24/02/1999 FILED BY THE PETITIONER.

EXT.P4: COPY OF ORDER, G.O.(P) NO.1851/99/FIN. DTD. 18TH SEPTEMBER, 1999.

/TRUE COPY/

KSS

T.R.RAMACHANDRAN NAIR, J.

=====

O.P.No.7735 of 2001-U.

=====

Dated this the 4th day of July, 2007.

J U D G M E N T

The petitioner is aggrieved by the nonsanctioning of pension for the service rendered by him with the second respondent. He joined the service of the second respondent as Lower Division Clerk on 3-1-1986 as per the advice of the Public Service Commission. He was promoted as Upper Division Clerk on 5-8-1991. While so, he submitted resignation from service as per letter dated 13-5-1997. The Chief Engineer (NR) recommended the acceptance of the resignation and accordingly as per Ext.P1 proceedings the same was accepted with effect from 1-6-1997. This was on a specific condition that he will have no lien and further claims in the Kerala Water Authority in future. He is now a practicing lawyer by profession in Thrissur Courts.

2. The petitioner submitted a representation Ext.P2 to allow the pension and gratuity for the service rendered by him. This was followed by Ext.P3 representation. The petitioner came to understand that going by the relevant provisions of the Kerala Service Rules, as he has not completed 20 years of qualifying service, he will not be eligible to get pension as per the present rules. Accordingly this writ petition has been filed.

3. The first respondent has filed a counter-affidavit. It has been pointed out that in Ext.P1 itself it has been mentioned that the petitioner will have no lien and no claims in the Kerala Water Authority in future. The

consequence of is that it will sever the link of the employee with his office and terminate its tenure. In view of the resignation his past service is forfeited and he had completed only 11 years of service in the Kerala Water Authority. There, it is contended that having tendered his unconditional resignation he cannot put a claim for getting retiring pension.

4. Rule 29 of Part III Kerala Service Rules deals with effect of resignation and dismissals. It is made clear in sub rule (a) that resignation of the Public Service, or dismissal or removal from it, entails forfeiture of past service. Interpreting the said rule, this Court has held in *Chandrasenan v. State of Kerala*, (1999(3) KLT 357) that any benefit linked with and relatable to the past service is automatically denied. That was a case where the appellant claimed the benefit of surrender earned leave which stood to his credit during the service period on the date of his resignation. The Division Bench considered the effect of Rule 29 of Part III K.S.R. and Rule 33 of K.S. & S.S.R. A similar question was considered by the Apex Court in the decision reported in *Union of India v. Braj Nandan Singh* (2005 (8) SCC 325). It was a case where the employee resigned from service. As per the relevant rule 26 of CCS (Pension) Rules, resignation from service entails forfeiture of past service. Their Lordships held that, “after acceptance of resignation, in terms of rule 26, the past service stands forfeited. That being so it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying service.” The same principles apply

here also.

5. The contention raised by the learned counsel for the petitioner is that the fixation of 20 years as qualifying service in Rule 56 of Part III K.S.R. is arbitrary and illegal. It is also pointed out that actually the act of the petitioner in resigning from service amounts to voluntary retirement and therefore, the petitioner is entitled for grant of pension.

6. The petitioner cannot be said to have voluntarily retired from service. There are specific procedures fixed under the rules to avail voluntary retirement from service. There is also difference between a person who has retired from service on superannuation on completion of 10 years of service and a person who resigns from service after completing 10 years of service. Hence the situation governed by Rule 57 of Part III K.S.R. and that of the petitioner are not similar. Further the right to receive pension is not a common law right. It is only statutory in nature. The distinction between resignation from service and voluntary retirement from service is important. The legal position governing these two different concepts have been explained in the decision reported in *Reserve Bank of India v. Cecil Dennis Solomon* (2004 (9) SCC 461). It has been held that, “though both involve voluntary acts, they operate differently. Resignation can be tendered at any time but voluntary retirement can be sought for only after rendering the requisite period of qualifying service. In case of the former normally retiral benefits are denied but in the case of the latter, the same is not denied.” These

principles squarely applies here. For one thing it cannot be said that a person merely on entry in service is having a vested right to claim pension. It cannot be disputed that it is a benefit relatable to the past services rendered by the petitioner. Therefore, an employer is well within his right to fix a specific period of service before the employee qualifies for pension. The object of the same is that the employer should get the services of the employee continuously for atleast 20 years. The contention of the petitioner therefore that he had a vested right to receive pension is therefore not correct. Hence there is no arbitrariness in respect of the prescription of 20 years in Rule 56 of Part III K.S.R. The case of the petitioner has to fail for other reasons also. In Ext.P1 itself it has been clearly stated that the petitioner will have no lien and further claims in the Kerala Water Authority in future. His resignation was not conditional and no further benefit has been granted. Having accepted the terms of Ext.P1 order he cannot turn around and seek for other benefits. For this reason also the contentions of the petitioner are liable to be rejected. Hence the writ petition fails and the same is dismissed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-